IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 412 of 2004

MURLIDHAR
V/S
TOLARAM @ PRAHLAD & ORS

Mr. MC BHOOT, for the appellant / petitioner

Date of Order : 14.12.2004

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the appellant.

By the impugned judgments/orders, the two learned Courts below have dismissed the appellant's application under O. 21 R. 97, 98 and 101 C.P.C.

The controversy arises in the circumstances, that a suit for eviction was filed by the land lord against one Mukh Ram, the respondent no. 8, who happens to be father of the present appellant, for eviction from a shop, as described in para-1 of the plaint. That suit was decreed finally. Thereafter when the matter was put in execution, the present objection petition was filed, contending inter alia that the appellant is a tenant of the apartments comprised of an underground at the annual rent of Rs. 600/-, and there is a godown measuring 12.9 x 11.6 ft. behind the shop, wherein the appellant is carrying on the business of battery and scrap. According to the appellant, he is continuing in possession of these apartments as tenant since 1985, but the land lord never gave receipts about the rent. It is also alleged, that the appellant has come to know of the decree recently. It is also alleged that the boundaries of the shop do not tally with the boundaries of the decree, and the opposite party in the objection petition are in collusion and are out and out to dispossess the appellant from the premises in question in the garb of the decree. Inter alia with these allegations, it was prayed that his possession and carrying on business in the godown and underground should not be interfered with in any manner.

The decree-holder contested the objection petition, contending that the apartments in question are part and parcel of the shop for which decree has been passed against the original tenant Mukh

Ram, who was tenant at the rate of Rs. 75/- per month, to whom receipts were being issued regularly, and the suit had been decreed for eviction finally, wherein in the High Court time was granted with consent of the parties to vacate the premises upto 30.4.2003 on certain conditions, which conditions have not been fulfilled, and the judgment debtor, in collusion with his son, has got deposited certain rent, and has got filed the present objection petition. It was also contended that the shop is the only opening for access to underground as well as to the alleged godown, and is in physical possession of Mukh Ram only. It is also contended that on 24.4.2002 when the Sale Amin went on the site, lock was of Mukh Ram, and not of the present appellant Murlidhar.

The appellant produced certain documents, comprising of the judgments and decrees, photo stat copies of certain books of accounts, tender of depositing the rent, registration certificate, Ration Card, blue print of map etc. While the decree-holder produced certain colour photographs, rent receipts, and the photo stat copy of the written statement filed in the original suit, and the photo stat copies of the statements of the witnesses examined by the defendant judgment-debtor.

The learned trial court found that the present appellant appeared in the suit as D.W.3, and did not mention anything about his possession on any part of the premises. It was also found, that the books of accounts produced by the appellant cannot be believed, as when the appellant's father had taken the shop on rent, he was being regularly given receipts, and when the suit for eviction had been filed against his father in the year 1985, it does not stand to reason that he would not be given receipts, or he would not take receipts, when he claims to be tenant since 1985. Likewise, it was also found that in the statements given as D.W.3, the appellant had admitted that he carries on the business of scrap in Bara outside Jassusar Gate, which Bara is on rent for the last 15 years, and that Bara is not shown to be a part of the property in question. Likewise, it was also noticed that on 24.4.2002 when the Sale Amin went on the site the judgment debtor alone was found, and when on 2.1.2004 the Sale Amin again went, it was found that wooden partition had been erected in the shop, which shows that there is only one tenant in the premises being the judgment debtor, and there could not be two tenants in one premises. With these findings the objection petition was dismissed.

Against these findings an appeal was filed, contending interalia, that when the appellant is an independent tenant of the premises in question, he cannot be evicted from the property in question. It was also contended that the documents produced by the

appellant have not been properly considered, and that he was not given opportunity to lead oral evidence. The learned lower Appellate Court went on considering the question on the anvil of the term "premises" given in Rajasthan Premises (Control of Rent & Eviction) Act, 1950, and found that the underground and godown are included in the definition of the term "premises". Thereafter the learned lower Appellate Court noticed that it was admitted on the side of the appellant, that the only one access is available for ingress and egress in the apartments in question and that is through shop, for which decree has been passed. From this admission, the learned lower Appellate Court concluded, that it is clear that the apartment in question form part of the shop in question only. It was then found, that the appellant in his statement recorded on 1.4.1998 clearly admitted, that he is carrying on business of iron scrap in the Bara outside the Jassusar Gate, which shows that he was not carrying on business in the godown or underground in question. The story of the appellant being independent tenant was disbelieved on appreciation of the material available on record. The books of accounts were found to be not reliable, and again in view of the fact, that the only way of ingress and egress to the apartment in question is through the shop for which decree has been passed, it was found that the apartment in question are included in the apartment for which decree has been passed, and cannot be termed as independent apartments. With these findings, the appeal has been dismissed.

Learned counsel for the appellant contended that from the description of the premises as given in the suit, it is clear that the underground and godown are not included therein, while the learned lower courts below have gone wrong, inasmuch as, the learned trial court has proceeded only on the basis, that there cannot be two tenants in one shop, while learned lower Appellate Court has proceeded on the basis of definition of "premises" as given in the Act, while the core question required to be gone into was, as to whether the premises in question are included in the shop for which the decree has been passed, and since this question has not been gone into, the impugned orders/judgments are liable to be set aside.

I have considered the submissions, and as is clear from the findings of the two learned courts below recapitulated above, and specially that of the learned lower Appellate Court, that when it is not in dispute, that the only way of egress and ingress to the apartment in question is through the shop for which decree has been passed, and they have no other independent way, it cannot be said, that the apartments in question were subject matter of independent tenancy

in favour of the appellant since the year 1985, when the suit for eviction has been filed in 1985 itself. I am at one with the findings of the learned lower Appellate Court, that it cannot be believed that the appellant is independent tenant in the apartments in question.

I may additionally notice, the contention of the learned counsel, regarding the description of the shop. The learned counsel read to me the description as given in para-1 of the plaint, and the description is, that in the North there is a road, in the South there is Chardiwari, in the East there is shop of Jugal, and in the West there is shop of Laxmi Narayan. Learned counsel has not been able to show, that the apartments in question are not included in these four boundaries as given in the decree.

Thus, the appeal does not involve any substantial question of law, and the same is, therefore, dismissed summarily.

(N P GUPTA),J.

/Sushil/